

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

DONALD R. POWERS,

Plaintiff,

v.

CIV 09-87 BB/CG

BERNALILLO COUNTY, and
RONALD TORRES,

Defendants.

ORDER TO FILE A *MARTINEZ* REPORT

This *pro se* prisoner civil rights matter is before the Court *sua sponte*. Plaintiff Donald Powers asserts that, due to overcrowding, the Metropolitan Detention Center in Albuquerque, New Mexico transferred him back and forth to the Bailey County Jail in Muleshoe, Texas a total of eight times from September 2007 to January 2008. See *Doc. 1* at 8, 19. He characterizes the moves as “illegal,” involuntary, and undertaken “as some form of indiscriminate pre-trial punishment or sadistic entertainment by local jailers.” *Id.* He alleges that the transfers interfered with his ability to consult with his attorney, to post bail, and delayed his trial. He also alleges that the conditions of transport were unconstitutionally cruel. See, e.g., *id.* a 7-12. Defendants filed their answer in May 2009, and have not filed any dispositive motions. See *Doc. 8*.

Under *Martinez v. Aaron*, 570 F.2d 317, 320 (10th Cir. 1978), this Court may order defendants to investigate the incident or incidents underlying Plaintiff's lawsuit and

submit a report of their investigation in order to develop a factual or a legal basis for determining whether a prisoner plaintiff has a meritorious claim. See, e.g., *Gee v. Estes*, 829 F.2d 1005, 1007 (10th Cir. 1987). A *Martinez* Report may be used in a variety of contexts, including motion for summary judgment or *sua sponte* entry of summary judgment. When a *Martinez* Report is used for summary judgment purposes, the *pro se* plaintiff must be afforded an opportunity to present conflicting evidence to controvert the facts set forth in the report. *Hall v. Bellmon*, 935 F.2d 1106, 1109 (10th Cir. 1991).

Wherefore,

IT IS HEREBY ORDERED that Defendants file a *Martinez* Report in accordance with the instructions below:

1. Defendants' comprehensive *Martinez* Report shall address all of Plaintiff's allegations and should include, but is not limited to: whether documents or other records pertaining to the events exist; and whether prison policies or regulations address the situation;
2. If documents and records do exist, Defendants shall include copies of them as attachments to the *Martinez* Report, arranged in a logical order and Bates-stamped or otherwise be clearly serially marked;
3. Defendants must provide affidavits to properly authenticate submitted documents, and may also submit other affidavits in support of the *Martinez* Report;
4. The submission of documents alone shall not be considered in compliance with this Order. Defendants are expected to also prepare the "report" portion of the *Martinez* Report that discusses the claims and the submissions that relate to them;
5. The Court is aware that materials contained in corrections files may be sensitive and that there may be valid reasons for keeping such information secret. As such, Defendants may redact confidential portions of documents submitted with the *Martinez* Report and

provide that version to Plaintiff. Alternatively, they may request that Plaintiff not be permitted to review certain portions of the *Martinez* Report and its attachments. If so, Defendants must make their objections to the Court fourteen (14) days prior to the *Martinez* Report filing and service date below. The entire *Martinez* Report must be submitted along with the objections, both under seal, to the Court for ruling if they elect this option;

6. Given the detail required above, the Court will give ample time for the Defendants to accomplish this task. Defendants shall file and serve their *Martinez* Report no later than Friday, February 5, 2010;
7. Plaintiff shall file and serve his response to the *Martinez* Report no later than Friday, March 5, 2010; and
8. Defendants shall file and serve their reply, if any, no later than Friday, March 19, 2010.

THE PARTIES ARE HEREBY GIVEN NOTICE that the *Martinez* Report may be used in deciding whether to grant summary judgment on Plaintiff's claims, whether by motion or *sua sponte*; as such, the parties should submit whatever materials they consider relevant to Plaintiff's claims. See *Hall*, 935 F.2d 1106.

A handwritten signature in black ink, appearing to read "Cannon", with a long horizontal line extending to the right.

UNITED STATES MAGISTRATE JUDGE